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IN THE

Supreme Court of the United States

October Term, 1960

No. 50

LOCAL 174, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
an unincorporated Association,
Petitioner,

v.

LUCAS FLOUR COMPANY, a Washington corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR WRIT OF CERTIORARI

Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America, prays that a Writ of Certiorari issue to review the judgment of the Washington Supreme Court entered in the above-entitled case on November 15, 1960.

CITATIONS TO OPINIONS BELOW

The memorandum opinions of the Superior Court of the State of Washington for King County are unreported and are set forth in the certified record (T. 39-55, 98-101)[1]. The opinion of the Washington Supreme Court is reported

[1]The page references to the certified transcript of record will be referred to as T. The page references to the verbatim transcript of the testimony at the trial (called Statement of Facts by Washington rule) will be referred to as St.

in 156 Wash. Dec. 935, 356 P.(2d) 1, and is in the certified record (T. 126-133), and in Appendix A hereto.

JURISDICTION

The judgment of the Supreme Court of Washington was entered on November 15, 1960 (T. 134, Appendix B). The jurisdiction of this court is invoked under 28 U.S.C. Sec. 1257 (3), since the rights, privileges and immunities specially set up and claimed under 29 U.S.C. Sec. 157, 158 and 185 have been denied.

QUESTIONS PRESENTED

Respondent conducts a flour brokerage business admittedly affecting interstate commerce. Petitioner union struck and maintained a one-man picket at respondent's warehouse for eight days in protest against the discharge of a union member employed by respondent. Some months thereafter it was determined retroactively by arbitration that the employee's work had been unsatisfactory and that such unsatisfactory work had been the reason for his discharge. The collective bargaining agreement between petitioner and respondent did not contain a no-strike clause applicable to this situation but did provide:

> "The Employer reserves the right to discharge any man in his employ if his work is not satisfactory."[2]

Neither party at any time applied to the National Labor Relations Board for relief in connection with this strike. The questions presented are:

[2]The contract is set out in full in Appendix D hereto.

A. Federal pre-emption as against tort action.

(1) Did the Washington Supreme Court's determination that this strike was neither protected by §7 nor prohibited by §8 of the Taft-Hartley Act[3] justify its assumption of jurisdiction of this action in the absence of any such determination by the National Labor Relations Board?

(2) Except for a suit under §301 of the Act, does not the National Labor Relations Board have exclusive primary jurisdiction to determine whether this labor agreement removed this strike from the protection of §7 or the prohibitions of §8 of the Taft-Hartley Act?

(3) Was not this strike, in protest against the employer's firing of a union member, an activity which is arguably protected by §7 or prohibited by §8 of the Taft-Hartley Act?

(4) May the State Court award damages in tort for injury caused by this strike in the absence of an initial determination by the National Labor Relations Board that the strike is neither a protected nor a prohibited activity under the Taft-Hartley Act?

B. Violation of Contract.

(5) In the absence of an express or implied no-strike agreement, can this strike constitute a violation of a collective bargaining agreement under §301 of the Taft-Hartley Act?

(6) If the strike was not a violation of contract under

[3] 61 Stat 136-158, 29 U.S.C. Secs. 141-187.

§301, did the State Court have jurisdiction to award damages for breach of contract under incompatible State doctrines of contract law?

(7) In the absence of an express or implied no-strike agreement, is not a strike in protest against the employer's discharge of a union member an activity protected by §7 of the Taft-Hartley Act?

(8) Has §301 of the Taft-Hartley Act supplanted incompatible substantive law of the State of Washington as to what conduct constitutes a breach of a collective bargaining agreement in an industry affecting interstate commerce?

(9) Was it a violation of this contract (within the meaning of §301) to strike for the purpose of forcing the reinstatement of a union member who had been discharged for unsatisfactory work, where at the time of the strike the union, on reasonable grounds, contended that the discharge was not because of unsatisfactory work?

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are those included in the Labor-Management Relations Act of 1947, as amended, (61 Stat 136-158, 29 U.S.C. Secs. 141-187) herein and commonly called the "Taft-Hartley Act." Pertinent sections of the Act are reproduced in Appendix C hereto.

STATEMENT OF THE CASE

A. Facts.

The respondent is a corporation engaged in the whole-

sale distribution of flour with its principal place of business and warehouse located at Seattle, Washington. Respondent purchases annually approximately $400,000.00 worth of flour and similar products from outside the State of Washington, representing approximately 60 per cent of respondent's total annual purchases (St. 14-18). At all pertinent times the respondent employed their truckers and warehousemen only from the membership of the petitioner, Local 174 (St. 184). Respondent had a collective bargaining agreement effective from and after April 1, 1955 containing among other things the following provision: (Exhibit 1, Appendix C, p. 17).

"ARTICLE II

> The employer reserves the right to discharge any man in his employ if his work is not satisfactory."

On May 12, 1958, "Jack" Welsch, a member of Local 174 and an employee of respondent for over five years (St. 158), had an accident as a result of which he stayed at home under doctor's care for two weeks (St. 161). When he was ready to return to work, respondent told him to take that week off and if they were busy the next week they would call him (St. 163, Exhibit 13). That same day the union business agent unsuccessfully protested this lay-off over the phone to the respondent (St. 135-137, 183). The next morning, May 27, 1958, petitioner sent a business agent with Welsch to the respondent's plant to "see what the problem was" (St. 138-139, 164, 174). Respondent's representative opened the meeting by stating that Welsch was discharged for unsatisfactory

work (St. 174, 165). This was the first indication by the respondent to either Welsch or a union representative that respondent was contemplating discharging Welsch (T. 46-47, St. 137, 164). Within a short time thereafter, a one-man picket (St. 142, R.42) was established at respondent's plant and the employees went out on strike (St. 139-140, 56). The strike continued for eight days after which it was terminated pursuant to a temporary injunction issued in this action (T. 6).

As to the cause of the strike, the trial court stated (T. 47, and see Exhibit 12, p. 7):

> "The employer was undecisive in its attitude toward Welsch and did not take a firm stand with reference to Welsch's unsatisfactory workmanship. This controversy would not have assumed its present proportions if the employer had taken a firm stand immediately after the accident and fired Welsch forthwith. It was difficult for the union, in rallying to the assistance of one of its members, to comprehend why the employer would want to postpone the day of reckoning by giving Welsch an additional one week 'lay-off' if his work was unsatisfactory to the point of necessitating his permanent separation from employment."

Neither party sought the assistance of the National Labor Relations Board at any time. After the issuance of the injunction on June 4, 1958, the parties agreed to arbitrate the issue of Welsch's discharge (St. 9-10, T. 6, Exhibit 11) and on November 7, 1958 some five months after the strike, the arbitrators rendered their de-

cision that Welsch's work had been unsatisfactory, that this unsatisfactory work was the reason for his discharge on May 27, and that he was not entitled to reinstatement with the respondent (Exhibit 12).

After trial, the Court granted judgment for the plaintiff in the sum of $6,501.60, based on the legal conclusion that "The defendant's picketing of plaintiff's premises was illegal and coercive." (T. 117-119). On appeal by the union, the Washington Supreme Court affirmed the judgment on two totally different theories; first, in tort, that the strike was an attempt to force the respondent to forego the exercise of a right expressly provided by the agreement, and secondly, in contract, that even though a no-strike provision could not be implied from the agreement, the strike nevertheless constituted a violation of the contract. The Court dismissed from consideration §301 of the Taft-Hartley Act on the ground that §301 was solely a jurisdictional provision and did not affect the substantive law to be applied to the enforcement of contracts.

The Court dismissed the pre-emption argument with a determination that the strike and picketing did not fall within the protection of §7 or the prohibition of §8 of the Taft-Hartley Act. This Court's decision in *San Diego Building Trades Council v. Garmon*[4] was distinguished on the ground that "in that case [Garmon] the cause had proceeded through the courts on the assumption that it was an unfair labor practice."

[4]*San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 3 L.ed. (2d) 775, 79 S.Ct. 773 (1959)

B. How Federal questions were presented.

Lack of State court jurisdiction by reason of the Taft-Hartley pre-emption was raised at the outset of the trial by Defendant's Memorandum of Authorities, Point IV (R. 35-37). After trial and before judgment, defendant filed a Motion for Dismissal Notwithstanding Court's Memorandum Decision challenging the Court's jurisdiction on the basis of the *Garmon* decision which had just been handed down (T. 102). After argument and further briefs, the Court denied this motion (R. 120). The pre-emption issue was argued to the State Supreme Court in Petitioner's Opening Brief (T. 123, pp. 12-26) and in Petitioner's Reply Brief (T. 125, pp. 5-10).

Although respondent argued to the trial court that the strike was a breach of contract (T. 62-64), the trial court imposed liability on a tort basis and appeared to ignore the breach of contract aspect (T. 117). Respondent's first reference to or mention of §301 of the Taft-Hartley Act was in its brief to the Washington Supreme Court (T. 124, pp. 27-29). Petitioner in its Reply Brief argued that §301 established substantive federal law and that respondent must sustain his contract action, if at all, under §301 rather than local common law (T. 125, pp. 13-15). We then argued that the strike was not a violation of contract within the meaning of §301 (T. 125, pp. 15-21) and cited federal decisions and the legislative history of §301 to this point.

In its opinion, the State Supreme Court discussed the

pre-emption questions and the breach of contract questions, deciding (a) that Taft-Hartley pre-emption did not apply to this action, (b) that §301 did not affect the substantive contract law to be applied, and (c) that the strike was a contract violation even though no promise not to strike could be implied from the labor contract. All issues raised in this Petition were specifically presented in the briefs to the Washington Supreme Court and were discussed in that Court's opinion and decided adversely to petitioner.

REASONS FOR GRANTING PETITION

I. PRE-EMPTION

A. The conclusions reached by the Washington Supreme Court regarding pre-emption are directly contrary to the decision of this Court in *San Diego Building Trades Council v. Garmon*.[3]

The Washington Supreme Court, focusing on only a portion of the *Garmon* opinion,[3] indicates in the opinion below that Taft-Hartley pre-emption cannot be invoked against state jurisdiction except where the State Court finds that the case is one "in which it is clear [or] in which it may be fairly assumed that the activity is protected by §7 or prohibited by §8 of the national labor relations act (sic)." (T. 128-129, Appendix A, p. 4). The opinion then quotes a portion of those two sections (omitting §8(d)) and finds that since the strike and the picketing in this case did not fall within the protection

[3] *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 3 L.ed. (2d) 775, 79 S.Ct. 773 (1959)

or prohibitions of these two sections, the State Court properly took jurisdiction of the action. It is submitted that this is an inversion of the jurisdictional standards set forth in *San Diego Building Trades Council v. Garmon*.

In the *Garmon* case this Court made it clear that if the union's activity is "arguably" or "potentially" subject to either §7 or §8 of the Taft-Hartley Act, state jurisdiction must yield to the National Labor Relations Board, at least until that Board has determined that the Act does not apply to the activities involved. In the instant case, a union's strike and picketing to reinstate a discharged member to his former job appears *prima facie* to be a protected union activity. The only doubt cast on this protection is a term of the collective bargaining contract which reserves to the employer the right to discharge an employee for unsatisfactory work. It is submitted that, except to the extent that §301 of the Act gives courts jurisdiction, the legal impact of this contract provision upon these particular strike activities and the application of the factual complex to the contract were matters to be determined initially by the National Labor Relations Board.

If on the one hand the Board should determine that the contract does not prohibit such a strike, then the strike is an activity protected by the Taft-Hartley Act and cannot be made the subject of a state court suit. If on the other hand the Board should determine that the contract implied a promise not to strike for the purposes and in the manner done here, then the question arises as to

whether this economic strike constituted a union unfair labor practice pursuant to §8(b)(3) as defined in §8(d)(4) of the Act, in that it would be viewed as an effort to terminate or modify the contract without complying with the requisite waiting period and notices. The Board has taken the position that an economic strike in the face of a no-strike agreement is an unfair labor practice under §8(b)(3) and §8(d). *United Mine Workers Union* and *Westmoreland Coal Company*, 117 N.L.R.B. 1072 (1957); *United Mine Workers of America* and *Boone County Coal Corp.*, 117 N.L.R.B. 1095 (1957), and see 9 Labor Law Journal 406 (1958).[4] In either view of the contract, it is for the Board, not the court, to make the initial jurisdictional decisions, both factual and legal.

It was stated in the *Garmon* case that in the absence of such a determination by the Board or of compelling precedent applied to essentially undisputed facts, it is not for the courts to decide whether the union's activities are subject to state jurisdiction. No compelling precedent existed to take the instant case out of the purview of §7 and §8 of the Act, and the facts as to the motivation for and the context of the strike were definitely disputed. The Court therefore should have deferred to the jurisdiction of the Board.

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[4]Enforcement of both of these decisions was denied by the Court of Appeals of the District of Columbia by a decision divided two to one. *Local 9735 U.M.W. v. N.L.R.B.*, 258 F.(2d) 146 (App. D.C. 1958); *International Union, U.M.W. of A. v. N.L.R.B.*, 257 F.(2d) 211 (App. D.C. 1958). It is submitted that until this matter is settled finally, the Board's position on this point is at least arguably correct. Cf. Feinsinger, the National Labor Relations Act and Collective Bargaining, 57 Mich. L.R. 807, 825.

To permit state courts to make the basic factual and legal determinations necessary to give them jurisdiction over strikes and picket lines, as held by the court below, would frustrate national labor policy and would thwart uniformity of treatment. This case does not involve matters of peripheral concern to the Taft-Hartley Act as in *International Association of Machinists v. Gonzales*, 356 U.S. 617, 2 L.ed.(2d) 1018, 78 S.Ct. 923 (1958); U.A.W. *v. Russell*, 356 U.S. 634, 2 L.ed.(2d) 1030, 78 S.Ct. 932 (1958); or *Selles v. Local 174, I.B.T.*, 50 Wn.(2d) 660, 314 P.(2d) 456 (1957) cert. den. 356 U.S. 975, 2 L.ed. (2d) 1149, 78 S.Ct. 1134 (1958). This case concerns a strike and a one-man picket established by a union against an employer on behalf of one of its members—a situation clearly at the center of the area of labor relations intended for regulation by the Taft-Hartley Act. Jurisdiction should not be initially determined by the courts.

B. By characterizing the protected or prohibited activity as a violation of a contractual right, as in this case, state courts can circumvent the exclusive initial jurisdiction of the National Labor Relations Board in most situations where a collective bargaining contract is in force.

The decision below was based on the assumption that there was no promise, express or implied, not to strike or picket. The court nevertheless asserted jurisdiction on the ground that, since the strike "was an attempt to force the respondent to forego the exercise of a right expressly provided by the agreement," it was a violation of that agreement and therefore beyond the protection of §7 of

the Taft-Hartley Act. If such judicial reasoning is permitted to stand, the Board's exclusive jurisdiction to determine whether union activities are protected or prohibited by the Taft-Hartley Act can easily be defeated in situations where the parties are covered by a collective bargaining agreement, because as more and more industries enter into labor agreements, and as such agreements deal in greater and greater detail with employer-employee relations, the more completely will the Board's authority over labor relations be displaced by court control. It is not to be presumed that Congress intended its structure for enforcing national labor policy should be so easily frustrated, *Local 774, I.A.M. v. Cessna Aircraft Co.*, 185 Kans. 183, 341 P.(2d) 989 (1959).

II. VIOLATION OF CONTRACT

A. The opinion below is in direct conflict with the decision of this Court in *Textile Workers Union v. Lincoln Mills*.

The opinion below states:

> "Section 301 of the labor management relations act confers jurisdiction upon lower federal courts to entertain suits based upon violations of labor agreements. We find nothing in the plain language of this statute which can reasonably be interpreted as preempting state jurisdiction, or as affecting it by limiting the substantive law to be applied." (Appendix A, p. 9).

This statement stands squarely contrary to the holding whereby this Court definitely and finally decided that §301 established a substantive body of federal labor law

for enforcement of labor agreements. *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 1 L.ed(2d) 972, 77 S.Ct. 912 (1957). In that case this Court stated with reference to suits under §301 (a):

> "Federal interpretation of federal law will govern, not state law. But state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate federal policy. Any state law applied, however, will not be an independent source of private rights." p. 456.

We cited and specifically discussed the *Lincoln Mills* decision to the court below, but the court appears to have ignored it. Having thus too easily disposed of §301, the court below was free to ignore any federal court precedents cited to them on the substantive law of labor contract violations as well as to ignore the Legislative history of §301. The judgment below was not based on §301, but on local tort and contract law.

B. The judgment below enforces local contract law that is incompatible with §301 of the Taft-Hartley Act and that has therefore been preempted by that act.

Pre-emption of local law by §301 would appear to be a necessary logical consequence of the doctrines contained in the *Lincoln Mills* decision and *Garner v. Teamsters, C. & H. Union,* 346 U.S. 485, 98 L.ed. 228, 74 S.Ct. 161 (1953). In the *Garner* case the Court stated:

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of

> the National Labor Relations Act is not to condemn all picketing, but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal act prohibits."

It would seem, therefore, that this strike was either a violation of a collective bargaining agreement within the meaning of §301 of the Taft-Hartley Act or it was an activity protected by §7 of the Act. To hold otherwise would be to permit states "to impinge on an area of labor combat designed to be free" and thereby to obstruct federal labor policy. No such state obstruction should be allowed here, because a non-violent strike is either (1) a violation of a collective bargaining agreement under §301 and gives rise to an action in the courts; or (2) an unfair labor practice and is the basis of charges before the National Labor Relations Board; or (3) neither a violation nor an unfair labor practice, and therefore within the protection of §7 of the Act, even though by local law, absent the Taft-Hartley Act, such a non-violent strike might be the basis of a contract or tort action. In other words, if a strike is not prohibited by §8 or §301 of the Act, it comes within the protection of §7.

The Court below seeks to justify its conclusion by grounding the judgment on common law tort or common law contract liability, and therefore beyond or apart from

pre-emption by the Taft-Hartley Act. However, it was stated in *Weber v. Anheuser-Busch*, 348 U. S. 468, 99 L.ed. 546, 75 S. Ct. 480 (1955):

> "Certainly if the conduct is eventually found by the National Labor Relations Board to be *protected* by the Taft-Hartley Act, the state cannot be heard to say that it is enjoining conduct for reasons other than those having to do with labor relations." p. 556.

C. The decision below, in direct conflict with principles followed in decisions of at least three Circuit Courts of Appeal regarding the §301 no-strike issue, holds that it is a contract violation for a union to strike, even though the union never agreed either expressly or by implication not to strike.

The opinion below states:

> "The appellant next contends that the picketing involved in the instant case was not in violation of the collective bargaining agreement, unless the agreement expressly or impliedly contained a no-strike provision. We disagree."

In the present-day approach to this problem, courts search the language of the contract to determine whether or not the intent of the contracting parties was to bar strikes and under what circumstances they were intended to be barred. *United Construction Workers v. Haislip Baking Co.*, 223 F.(2d) 872 (CCA 4, 1955) cert. den. 350 U. S. 347; *Lewis v. Benedict Coal Corp.*, 259 F.(2d) 346 (CCA 6, 1958), affirmed as to contract interpretation by equally divided Court: 361 U. S. 459, 4 L.ed.(2d) 442, 80 S. Ct. 489 (1960); *U. M. W. A. v. N. L. R. B.*, 257 F. (2d) 211, (App. D. C. 1958). In each of these cases the

respective court examined the wording and context of the labor contract to determine whether the words implied an agreement not to strike. In all but *U. M. W. A. v. N. L. R. B.*, the Court found that the agreement implied a no-strike provision. In the *U. M. W. A.* case, the Court held that no such intent was to be implied, and therefore the strike was not a violation of the contract. Thus, it is clear that courts will not import strike prohibition to a labor contract unless the terms of the agreement express or imply such a prohibition.

The legislative history of §301 accords with this view. Both Majority and Minority Reports of the Senate Committee on Labor and Public Welfare affirm that no-strike clauses would be an item to be included in or excluded from a labor agreement as a result of collective bargaining. Sen. Rep. 105, Part 1, 80th Cong., 1st Sess. (1947) pp. 17-18. Sen. Minority Report 105, Part 2, 80th Cong., 1st Sess. (1947) p. 22.

III. THIS STRIKE WAS NOT A VIOLATION OF THIS COLLECTIVE BARGAINING AGREEMENT WITHIN THE MEANING OF §301.

A. No intent to prohibit strike against a discharge of a union member appears in this contract.

Article II of the contract provides:

> "The Employer *reserves* the right to discharge any man in his employ if his work is not satisfactory." (Emphasis added).

Thus the contract is written in terms of *reservation* of

right by the employer, rather than *the granting* of a right to the employer. The employer reserved the same right that he would have had in the absence of the contract and against the exercise of which right the Union would have been entitled to strike and picket. It is difficult to see how this reservation gives rise to a strike prohibition.

Moreover, the first paragraph of Article XIV of the contract makes express provision against suspension of work during the existence of arbitration proceedings concerning the interpretation of a contract. (It is to be noted that such a provision is omitted from the second paragraph of Article XIV providing for arbitration of other matters.) If it had been the actual intention of the parties that there should be no work-stoppage by reason of a disputed discharge, it is reasonable to assume that the same provision would have been expressed in Article II.

B. The purposes of the Taft-Hartley Act dictate that strike prohibitions, unless intended, should not be imported to a contract merely because momentarily convenient.

Express no-strike provisions have been common in labor agreements since the beginning of the union movement and are now common to the point of being normally expressed in collective bargaining agreements, and not casually but frequently in close detail. *Volume 32 Labor Relations Reference Manual,* p. 6; *Labor Relations Reporter LRX 87, Section 14.* In practice a collective bargaining contract does not necessarily express full coverage of all relations between employer and the union.

"It covers only such matters as the parties have been able to agree upon and leaves unresolved such issues as the parties may not have been able to agree upon and with respect to which the law does not require a concession by either party." *United States Steel Corp. v. Nichols*, 229 F.(2d) 396, 399, 56 ALR (2d) 980 (CCA 6, 1956), cert. den. 351 U. S. 950, 100 L.ed. 1474, 76 S. Ct. 846.

The objective of collective bargaining is to reach contractual undertakings arrived at by both parties knowingly and intentionally at the bargaining table. Basic in Congressional labor policy is the philosophy that the free flow of commerce will be fostered by voluntary and equal bargaining resulting in intentional agreements. This policy is frustrated *pro tanto* when consequences are imported to a contract beyond those undertaken by the parties, either expressly or by necessary implication. The decision of the court below openly and forthrightly frustrates this federal policy and ignores common sense by holding petitioner liable for a strike which petitioner never agreed to ban.

IV. WIDESPREAD IMPORTANCE TO INDUSTRIES AND UNIONS OF THE ISSUES DETERMINED IN DECISION BELOW.

A. If the decision below as to pre-emption is allowed to stand, it will bring about lack of uniformity to most interstate labor cases.

This case is a typical example of what occurs when a state court asserts control over a strike and picket line subject to the federal labor acts. An examination of the

reasoning in the trial court's memorandum decision (T. 39-55) and the State Supreme Court's opinion (Appendix A) reveals completely divergent approaches to both the facts and their legal consequences, depending on which court is handling the case. The trial court regarded this as a tort action in which the issue was whether "the inexpert handling of the discharge of Welsch by the employer constitutes legal justification for the illegal picketing of plaintiff's place of business." (T. 47). The picketing was "illegal" in the trial court's view because it was "coercive," that is to say, because it was effective as an economic weapon against the employer.

The State Supreme Court in part converted this tort action into a common law contract action. Even though it did not find a no-strike promise expressed or implied in the labor contract, it held that the strike and picketing was in violation of the contract.

If there can be such diversity of approach between courts of the *same* state, it can be imagined what multiplicity of legal standards and factual interpretations must come out of the several states. If the *instant* case stands for a modification of the former holdings of this Court, and we believe it will, then many of the protections afforded by both §7 and §8 of the Taft-Hartley Act will be gradually rendered worthless, case by case, and the carefully protected uniformity, the very reason for the doctrine of pre-emption, will in this manner certainly be defeated.

B. For certainty in existing labor agreements, and in those to be negotiated, it is essential that the contract and pre-emption questions here in issue be resolved.

Labor and management are entitled to know if a strike can be held a breach of contract in the absence of an undertaking not to strike. The rule set forth in the decision below would bring particular confusion to those contracts containing a limited or conditional no-strike clause, and negotiators of such agreements must know whether the limits or conditions of the no-strike undertakings will be the limits of no-strike prohibitions. Similarly, the parties to an already existing contract need to know whether the strike prohibition extends beyond the limits of those undertaken in the labor agreement.

The Taft-Hartley pre-emption doctrine, bearing as it does on labor's right and obligations under the Act, should be applied as uniformly and predictably as possible. The legality or illegality of a strike is certainly something that should be reasonably clear and definite. In the clash of labor relations, time rarely permits meticulous and protracted study and application of facts to the rules of a diversity of courts and jursidictions. If the prospects of protection, prohibition and liability are confused and dependent upon which of several courts and boards may ultimately pass upon the factual and legal issues, no reasonable forecast or opinion can be given as to the legitimacy or illegitimacy of a strike.

C. The protection afforded employees by §7 of the Taft-Hartley Act will be substantially reduced, should the decision below stand.

Millions of industrial employees in the United States are presently covered by collective bargaining agreements. Of these agreements the Bureau of National Affairs found in 1957 that 87 per cent provided an absolute ban on strikes, 52 per cent provided conditional strike prohibitions, and 11 per cent contained no strike ban. If the doctrine of violation of contract without breach of a promise, express or implied, is allowed to gain currency as a judicial device for thwarting the jurisdiction of the National Labor Relations Board, it could very seriously limit the protections otherwise afforded by §7 to millions of union members.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

February 1, 1961

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APPENDIX

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LUCAS FLOUR COMPANY, *Respondent*, v. LOCAL 174, TEAMSTERS, CHAUFFEURS, & HELPERS OF AMERICA, an unincorporated association, *Appellant*.	No. 35310 Department One Filed Oct. 13, 1960

This is an appeal from a judgment for the plaintiff in an action for damages, which arose out of the following facts.

The plaintiff, Lucas Flour Company, is a Washington corporation, principally engaged in the wholesale distribution of flour. The plaintiff employed members of the defendant, Local 174, Teamsters, Chauffeurs & Helpers of America, with whom the plaintiff had entered into a collective bargaining agreement on April 1, 1955.

In 1953, the plaintiff had employed one Melvin T. Welsch, who first worked as a truck driver and then as a warehouseman. His work was unsatisfactory in both capacities and on more than one occasion only the intervention of the union forestalled his discharge. On May 12, 1958, Welsch started a fork-lift truck, used in the plaintiff's warehouse, while it was in gear and caused it to run off the end of the warehouse floor onto the railroad tracks four feet below. The truck was extensively damaged and Welsch was injured. While at home recovering from

these injuries, Welsch received the following memo from the plaintiff:

> ". . . The enclosed check covers your second week of vacation. We have decided that it would be better to take next week off for part of your vacation and than [sic] should we be busy the following week I will call you, otherwise take the second week of your vacation and rest . . ."

On the same day, May 23, Welsch went to see Floyd Anderson, business agent and vice-president of Local 174, and stated that he was ready to return to work. Welsch obtained a written release from his doctor pursuant to Anderson's advice. He presented the release to the secretary-treasurer of the plaintiff corporation, who told him to take the week off and that they would call him if they were busy the following week. Welsch reported this to Floyd Anderson who called the plaintiff's plant, and on the morning of May 27, 1958, sent a business agent to the plant. The business agent was informed that Welsch had been discharged for unsatisfactory work, and he reported this to Floyd Anderson by telephone. The business agent then called the plaintiff's employees out on strike and the plant was picketed. The picketing continued until June 4, 1958, when it was terminated by a temporary injunction issued by the superior court for King county. On September 11, 1958, the matter of Welsch's discharge was submitted to arbitration, and on November 11, 1958 the arbitrators made the following findings and award:

> "1. That the work of Melvin T. Welsch was unsatisfactory prior to his discharge, in that he failed

to carry out his prescribed duties of keeping the warehouse clean and rotating the stock of merchandise; during his absences due to illness, he failed to notify the employer as to the reasons or when he expected to return; and failed to exercise proper care in the operation of a fork-lift truck, by starting the same while it was in gear and causing it to fall a distance of four feet from the warehouse floor to the railroad siding, thereby endangering his life and causing extensive damage to the truck.

"2. That such unsatisfactory work was the reason for Melvin T. Welsch's discharge on May 27, 1958.
"• • •

"AWARD

"The Board hereby orders that the discharge of Melvin T. Welsch on May 27, 1958, was justified and that he is not entitled to reinstatement with his former employer, Lucas Flour Company."

The action for damages came on for trial on March 16, 1959, both parties stipulating that the findings of the arbitrators were binding upon them. The trial court took additional evidence on matters which it considered had not been covered by the findings of the arbitrators, and at the conclusion of the trial entered judgment awarding damages, in the amount of $6,501.60, to the plaintiff. The defendant appeals.

The appellant, Local 174, contends the trial court was without jurisdiction because the national labor relations board had exclusive jurisdiction over the controversy:

Appellant cites the recent case of *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 3 L. Ed.(2d)

775, 79 S. Ct. 773 (1959), wherein the United States supreme court said;

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act [61 Stat. 140], or constitute an unfair labor practice under §8, due regard for the federal enactment requires that state jurisdiction must yield . . .
>
> "At times it has not been clear whether the particuluar activity regulated by the States was governed by §7 or §8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board . . ."

In that case, the cause had proceeded through the courts on the assumption that it was an unfair labor practice. The instant case is not one in which it is clear, nor in which it may be fairly assumed, that the activity is protected by §7 or prohibited by §8 of the national labor relations act. On the contrary, a reading of the sections makes it clear that the activities here involved fail to come within the purview of either of these sections. Section 7 of the act, 29 U. S. C. A., §157, provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

The collective bargaining agreement in force between

these parties contained the following provision:

> "The Employer reserves the right to discharge any man in his employ if his work is not satisfactory."

The strike in the instant case was in protest against the discharge of an employee for admittedly unsatisfactory work; in clear violation of the agreement. It was an attempt to force the respondent to forego the exercise of a right expressly provided by the agreement. It could scarcely be argued that the same provision of the act, which gives the right to bargain collectively and to enter into collective bargaining agreements, also gives the right to ignore such agreements, or gives the right to do anything which would nullify the effect of such agreements.

The question then remains whether this was a strike which would constitute an unfair labor practice under §8 of the act, 29 U. S. C. A., §158, which provides:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: . . . or (B) an employer in the selection of his respresentatives for the purposes of collective bargaining or the adjustment of grievances;
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uni-

formly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees . . .

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified . . . (C) forcing or requiring any employer to recognize or bargain with a particular labor organization . . . if another labor organization has been certified as the representative . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board . . .

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory . . .

> "(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

From our reading of this section we cannot say that it might be "fairly assumed" that the instant case falls within the purview of any of the subsections of 29 U. S. C. A., §158 (b). Therefore, the test announced in *San Diego Building Trades Council v. Garmon, supra*, when applied to the present facts, does not militate against state court jurisdiction.

However, this is not the sole basis for concluding that this is a case properly within the ambit of state jurisdiction. The respondent brought this action in the superior court of this state to recover for damages incurred as a result of appellant's attempt to coerce the respondent into foregoing his exercise of a contractual right. In *Selles v. Local 174 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 50 Wn.(2d) 660, 314 P.(2d) 456 (1957), this court said:

> "We know that the Federal government has pre-empted the field as to many phases of labor relations, but not as to all. We cannot find from the act, as interpreted by the supreme court, that it was the intention of Congress to deprive a workman of his time-honored right to sue in his own state court for damages resulting from a common-law tort and to relegate him, for sole relief, to this particular Federal agency.
>
> "Under the facts of this case, there is no 'resounding

collision' between the remedies afforded under the act and in the state court. Under the one, the board shall issue a cease and desist order and *may* order reinstatement, with or without back pay. Under the other, the state court may not enjoin or issue a cease and desist order (except in case of violence), and may not order back pay, but it can award damages for a common-law tort. The relief granted by the board, with the exception of the cease and desist order, is entirely discretionary and is exercised to effectuate the policies of the act and, in particular, to prevent unfair labor practices. The relief granted in a common-law tort action is compensation to a plaintiff for damages sustained by reason of the tort.

"Where the relief granted under state procedure is so similar to that granted under the act that a conflict ensues between the two, the conflicting state procedure is excluded. Where such relief is not similar to that afforded under the act, there is no conflict between the state and Federal remedies, and the state procedure survives. . . . Respondent's right to damages, in this case, for a common-law tort, differs from any remedy which the board has power to provide. The state court, therefore, had jurisdiction to entertain the action."

We believe the theory of the *Selles* case is applicable whether the damages are the result of tortious interference with a party's employment or business or the result of depriving that party of a contractual right. It would be unreasonable to conclude that Congress intended to pre-empt the field of labor relations to such an extent that any party, employer, employee or labor organization would be left without a means of obtaining compensation for damages suffered.

Appellant contends, however, that §301 of the labor-management relations act, 29 U. S. C. A., §185, has supplanted common-law interpretation and enforcement of collective bargaining agreements.

Section 301 of the labor management relations act confers jurisdiction upon the lower federal courts to entertain suits based upon violations of labor agreements. We find nothing in the plain language of this statute which can reasonably be interpreted as pre-empting state jurisdiction, or as affecting it by limiting the substantive law to be applied.

The appellant next contends that the picketing involved in the instant case was not in violation of the collective bargaining agreement, unless the agreement expressly or impliedly contained a no-strike provision. We disagree. The collective bargaining agreement existing between the parties to this lawsuit created rights and duties on both sides. One of the principal benefits obtained by entering into a collective bargaining agreement is that each party's rights are clearly defined and established, and in the fact that each may freely and safely exercise these rights. By virtue of the agreement here in question the respondent had the right to discharge any employee for unsatisfactory service. If the appellant could bring coercive economic pressure to bear whenever the respondent should attempt a proper exercise of this right, the collective bargaining agreement would have been merely a worthless gesture, a document to be treated by both parties as though it had never been executed.

The collective bargaining agreement is the cornerstone of successful labor management relations. To hold that either party to such an agreement can disregard its express terms without incurring liability for the consequences would annihilate all progress in this area with a single stroke of the pen. Collective bargaining agreements would be unenforcible by either side, and would create rights without remedies to protect these rights.

The appellant next contends that this court is not justified in sustaining jurisdiction on the basis that the picketing was in breach of contract since the trial court based its judgment solely on tort liability and made no finding of a breach of contract.

From the pleadings, the theory is established that the respondent was injured by the appellant's breach of contract and this theory is clearly supported by the record. Therefore, the rule that the judgment of the trial court will be sustained on any theory established by the pleadings and supported by the proof is applicable. *Lundberg v. The Corporation of Catholic Archbishop of Seattle*, 155 Wash. Dec. 75, 346 P.(2d) 164 (1959); *Guerin v. Thompson*, 53 Wn.(2d) 515, 335 P.(2d) 36 (1959).

Finally, the appellant contends the evidence of lost profits was too speculative and uncertain to show the respondent's damages with reasonable certainty.

We are satisfied that there is substantial evidence in the record to support the finding of the fact of damage to the respondent's business with reasonable certainty, and

the amount of damages awarded was well within the range of the evidence introduced.

Finding no merit in appellant's other assignments of error, the judgment of the trial court must therefore be affirmed.

It is so ordered.

HUNTER, J.

WE CONCUR:

WEAVER, C. J.

MALLERY, J.

HILL, J.

FOSTER, J.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF WASHINGTON
TUESDAY, NOVEMBER 15, 1960

LUCAS FLOUR COMPANY, *Respondent,* vs. LOCAL 174, TEAMSTERS, CHAUFFEURS & HELPERS OF AMERICA, an unincorporated association, *Appellant.*	JUDGMENT No. 35310 King County No. 521982

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 15th day of November, A.D. 1960, on the motion of Allen, DeGarmo and Leedy, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; and that the said Lucas Flour Company have and recover of and from the said Local 174, Teamsters, Chauffeurs & Helpers of America, an unincorporated association, and from Continental Casualty Company, surety to the extent of $300.00, the costs of this action taxed and allowed at Three hundred thirty-six and 92/100 ($336.92) Dollars, and that execution issue therefor. And it is furthur ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Journal 43 at page 468 In the Office of the Clerk of the Supreme Court

APPENDIX C

Section 7 of the Taft-Hartley Act; 29 U. S. C. §157; 61 Stat. 140:

Rights of Employees

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 8 (b) (3) of the Taft-Hartley Act; 29 U. S. C. §158 (b) (3); 61 Stat. 141:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

• • •

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;"

Section 8 (d) of the Taft-Hartley Act; 29 U. S. C. §158 (d); 61 Stat. 142-143:

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obliga-

tion of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty

days after such notice is given or until the expiration date of such contract, whichever occurs later: . . ."

Section 301 of the Taft-Hartley Act; 29 U. S. C. §185; 61 Stat. 156-157:

Suits by and against labor organizations

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other

legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

APPENDIX D

PRIVATE CARRIER AGREEMENT

Terms of Agreement

The following agreement and scale of wages shall be in force and effect on and after April 1, 1955, as between Lucas Flour and Local Union #174, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and shall continue in effect until April 1, 1958, and shall continue from year to year thereafter provided either party may open this agreement by giving notice in writing not later than sixty days prior to the expiration date.

General Conditions

ARTICLE I

The Employer agrees to continue to recognize the Union as the sole collective bargaining agent for all employees falling within the jurisdiction of this agreement.

It is further agreed that all Union workmen employed by the Employer shall maintain their membership in good

standing in the Union and that non-union workmen employed shall become members of the Union on or after the thirtieth day following the beginning of employment or the effective date of this agreement, whichever is later. Further, any liberalization from the Union's point of view which may be made in the Union Shop Provision as defined in the Labor Management Relations Act, either by Congressional Amendment or Judicial decision, shall be adopted by the parties and made a part of this agreement.

ARTICLE II

The Employer reserves the right to discharge any man in his employ if his work is not satisfactory.

ARTICLE III

No workman shall be discriminated against for upholding Union principles, and any man who works under the instructions of the Union, or who serves on a committee shall not lose his job or be discriminated against for this reason.

It shall not be a violation of this agreement or cause for discharge for any employee to refuse to cross a picket line in the performance of his duties.

ARTICLE IV

The following days shall be considered holidays: January 1, February 22, May 30, July 4, Labor Day, Thanksgiving Day and December 25, and all regular employees shall be paid for all such holidays regardless upon which day in the week the holiday should fall. If any work is performed by such employee on such holiday, additional

compensation at straight time shall be paid. No employee shall be called on such holiday for less than a full day. When any of the aforementioned holidays fall on Sunday, the Monday following shall be considered the holiday. If a holiday occurs during an employee's vacation, he shall receive holiday pay in addition to his vacation pay.

Five consecutive days of eight consecutive hours, Monday through Friday, inclusive, shall constitute a week's work; time to start when driver arrives at the garage. No driver and/or helper shall work before 7:00 A.M. or after 6:00 P.M. except in cases of emergency and/or by mutual consent between the Employer and Local Union #174. Any work performed before the regular starting time, or after the regular quitting time, shall be considered overtime and shall be paid for at the rate of time and one-half. All Saturday work shall be guaranteed eight (8) hours work at the rate of time and one-half. All Sunday work shall be guaranteed eight (8) hours work at the rate of double time.

Any extra helper or driver working four (4) full consecutive days in five (5) consecutive days (Sundays and holidays excepted) shall be considered a steady man, and shall be paid the same scale of wages as a steady man.

ARTICLE V

All members who have been employed for a period of one (1) year or over shall have one (1) weeks' vacation with pay; for two (2) years or over, two (2) weeks' vacation with pay; and fifteen (15) years of employment, three

(3) weeks' vacation with pay.

All regular employees shall receive pro-rated vacations after the first year of service at the rate of 1/12 of the determined vacation pay for each month of service.

Any employees who have been receiving more favorable vacation privileges prior to the signing of this agreement shall continue to receive them for the duration of this agreement.

ARTICLE VI

Seniority shall prevail in layoffs for all employees after three (3) months' service. In the event of a layoff, the last employee hired shall be the first laid off.

ARTICLE VII

When a regular driver takes out a vehicle, he shall receive a full day's pay. Any regular driver reporting for duty in the morning, waiting subject to orders, shall be paid for one-half day. In computing overtime, for less than fifteen minutes, fifteen minutes shall be allowed; for over fifteen minutes and less than one-half hour, one-half hour shall be allowed; for over one-half hour and less than forty-five minutes, forty-five minutes shall be allowed; for over forty-five minutes and less than one hour, one hour shall be allowed.

ARTICLE VIII

When Employers prescribe wearing apparel for employees, they shall pay for same. It shall bear the Union label. Employees who wear uniforms prescribed by Employers shall pay for the cleaning of same not to exceed

ten cents (10c) per day.

ARTICLE IX

No employee, who prior to the date of this agreement was receiving more than the rate of wages designated in this agreement for the class of work in which he is engaged, shall suffer a reduction in the rate of wages from the application of this agreement.

ARTICLE X

EFFECTIVE APRIL 1, 1955

All regular employees shall be guaranteed a full week's work.

	PER WEEK	PER HOUR OVERTIME
Trucks with Gross License Capacity 20,000 lbs. and under	$86.60	$3.24¾
Over 20,000 lbs.	88.60	3.32¼
Semi Trucks and Trucks and Trailers	90.60	3.39¾
Steady Helpers and Bull Drivers	83.60	3.13½
Extra Helpers and Drivers of Trucks 20,000 lbs. and under	2.16½	3.24¾
Extra Drivers of Trucks over 20,000 lbs.	2.26½	3.39¾

EFFECTIVE APRIL 1, 1956

All regular employees shall be guaranteed a full week's work.

	PER WEEK	PER HOUR OVERTIME
Trucks with Gross License Capacity 20,000 lbs. and under	$89.00	$3.33¾
Over 20,000 lbs.	91.00	3.41¾
Semi Trucks and Trucks and Trailers	93.00	3.48¾
Steady Helpers and Bull Drivers	86.00	3.22½
Extra Helpers and Drivers of Trucks 20,000 lbs. and under	2.22½	3.33¾
Extra Drivers of Trucks over 20,000 lbs.	2.32½	3.48¾

EFFECTIVE APRIL 1, 1957

All regular employees shall be guaranteed a full week's work.

	PER WEEK	PER HOUR OVERTIME
Trucks with Gross License Capacity 20,000 lbs. and under	$91.80	$3.44¼
Over 20,000 lbs.	93.80	3.51¾
Semi Trucks and Trucks and Trailers	95.80	3.59¼
Steady Helpers and Bull Drivers	88.80	3.33
Extra Helpers and Drivers of Trucks 20,000 lbs. and under	2.29½	3.44¼
Extra Drivers of Trucks over 20,000 lbs.	2.39½	3.59¼

ARTICLE XI

Night shift premium of fifteen cents (15c) per hour shall be paid for all second shift work performed between the hours of 6:00 P.M. and 7:00 A.M.

As of April 1, 1955, each company shall pay into a Health and Welfare Fund the sum of $10.40 per month for every employee covered by this agreement who worked eighty (80) hours or more in the month of March, 1955, and thereafter shall pay $10.40 per month for each eligible employee, employed eighty (80) hours or more during the preceding month, said payment to be made on or before the tenth (10th) day of each month.

ARTICLE XII

Commencing October 1, 1955, and during continuance of this Collective Bargaining Agreement, the Employer shall pay into the Western Conference of Teamsters Pension Trust Fund on account of each member of the bargaining unit an amount equal to ten cents (10c) for each hour for which compensation is paid to him, said amounts

to be computed monthly. The total amount due for each calendar month shall be remitted in a lump sum not later than ten days after the last business day of each month. The Employer agrees to abide by such rules as may be established by the Trustees of said Trust Fund to facilitate the determination of the hours for which contributions are due, the prompt and orderly collection of such amounts, and the accurate reporting and recording of such hours and such amounts paid on account of each member of the bargaining unit. Failure to make all payments herein provided for, within the time specified, shall be a breach of this agreement.

ARTICLE XIII

In the event of war, declaration of emergency, imposition of civilian wage controls by the U. S. Government during the life of this contract, either party may reopen the same upon thirty (30) days written notice and request renegotiation of matters dealing with wages and hours. Upon the failure of the parties to agree in such negotiations, either party shall be permitted all *lawful* economic recourse to support their request for revisions. If governmental approval of revisions should become necessary, all parties will cooperate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirements of applicable law so as to permit economic action at the expiration thereof.

ARTICLE XIV

Should any difference as to the true interpretation of

this agreement arise, same shall be submitted to a Board of Arbitration of two members, one representing the firm, and one representing the Union. If said members cannot agree, a third member, who must be a disinterested party shall be selected, and the decision of the said Board of Arbitration shall be binding. It is further agreed by both parties hereto that during such arbitration, there shall be no suspension of work.

Should any difference arise between the employer and the employee, same snall be submitted to arbitration by both parties. Failing to agree, they shall mutually appoint a third person whose decision shall be final and binding.

If any employee is removed from service for any doubtful cause, he shall have a fair and impartial investigation within three days. If found guilty, he shall suffer the penalty, and if not, he shall be paid for his time off at the regular scale of wages.

SIGNED THIS ..... DAY OF.....1955

FOR THE COMPANY:

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FOR THE: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 174

GEORGE CAVANO, *Secretary-Treasurer*